

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES L. MURPHY and DIANN MURPHY,

Plaintiffs-Appellees,

v

NORMAN DOMINIC PRITCHARD and  
MAUREEN PRITCHARD,

Defendants-Appellants.

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UNPUBLISHED

October 1, 2002

No. 231423

Kalamazoo Circuit Court

LC No. 99-000344-NI

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Defendants, the Pritchards, appeal as of right from a final judgment incorporating an award of discovery sanctions. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

On June 26, 1996, Norman Pritchard (Pritchard) was driving when his vehicle struck the vehicle James Murphy was driving. Pritchard's blood alcohol level was .27 at the time of the accident and there is no dispute that he caused the collision.

Shortly after the accident, the Pritchards moved to Colorado. In January 2000, the Murphys requested deposition dates. Defense counsel for the Pritchards informed the Murphys that Pritchard was disabled and could not return to Michigan. The Murphys then scheduled the depositions for Pritchard and his wife to take place in Colorado on March 31, 2000.

During the deposition, Pritchard stated that he was not disabled and nothing prevented him from returning to Michigan. Defense counsel also instructed Pritchard not to answer any questions relating to his history of alcohol use and treatment. Plaintiffs' counsel noted that Pritchard was required to answer the questions subject to the objections under MCR 2.306. Defense counsel continued to instruct Pritchard not to answer the questions. Maureen Pritchard was not yet a named defendant in the case when her deposition was taken. Defense counsel also advised her not to answer questions about her husband's alcohol use and treatment.

Plaintiffs moved to compel discovery, and sought sanctions under MCR 2.119, 2.302, 2.306, and 2.313 for defense counsel's actions in limiting the depositions. After arguments on

the motion, the trial court found that there was no excuse for the failure to provide responses, and the failure was very costly because the depositions were taken in Colorado. The fact that Pritchard was not limited in travel aggravated the misbehavior. As a result of defense counsel's actions, the deposition was effectively aborted without cause. In a June 7, 2000 order, the trial court directed Pritchard to answer interrogatories, attend a deposition, and pay the expenses of Murphy's counsel for taking the first depositions. The parties subsequently accepted a mediation award of \$60,000, and final judgment was entered November 15, 2000, including a separate sanction amount of \$4,189.11. The Pritchards now argue that the trial court lacked the authority to order them to pay for the Murphy's counsel to travel to Colorado.

## II. Standard Of Review

A decision to impose discovery sanctions is committed to the discretion of the trial court, meriting review for an abuse of that discretion.<sup>1</sup>

## III. Discovery Sanctions

According to the Pritchards, the trial court awarded sanctions pursuant to MCR 2.313(A)(5)(a), which permits a trial court to award expenses if it also grants a motion to compel discovery, stating:

If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, *to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees*, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expense unjust.<sup>[2]</sup>

The Pritchards rely on *Merit Mfg & Die, Inc v ITT Higbie Mfg Co*,<sup>3</sup> for their interpretation of this court rule, which they claim limits sanctions to the cost of obtaining an order to compel discovery. The Pritchards therefore argue that trial court exceeded its discretionary authority when it ordered them to pay the costs associated with taking an unsatisfactory deposition or taking another deposition. Though the Murphys attempt to distinguish *Merit*, we agree with the Pritchards that *Merit* holds that sanctions under MCR 2.313(A)(5)(a) may not include all the costs the trial court ordered them to pay.

Nevertheless, we do not believe that the trial court ordered sanctions under this court rule. The only place the record mentions a court rule related to sanctions was in the Murphys' brief supporting their motion for sanctions, where they referred fleetingly to MCR 2.313(D)(2) and (3). At the motion hearing, neither attorney nor the trial court referred even obliquely to a court rule for sanctions. Rather, our impression from the transcript of that hearing is that the trial court was acting on its firmly rooted and inherent authority, not a court rule, in ordering these

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<sup>1</sup> See *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 450; 540 NW2d 696 (1995).

<sup>2</sup> Emphasis added.

<sup>3</sup> *Merit Mfg & Die, Inc v ITT Higbie Mfg Co*, 204 Mich App 16; 514 NW2d 192 (1994).

sanctions.<sup>4</sup> Only on appeal have the Pritchards contended that the trial court was acting on the basis of MCR 2.313(A)(5)(a).

“This Court has repeatedly recognized that a trial court has inherent authority to impose sanctions on the basis of the misconduct of a party or an attorney.”<sup>5</sup> Indeed, the trial court’s statements on the record reflect that it thought that the Pritchards’ attorney had engaged in misconduct in causing the Murphys’ attorney to incur the expense of traveling to Colorado only to refuse to allow the Pritchards to answer questions at the deposition. Under these circumstances, the trial court did not abuse its discretion in ordering sanctions.

Affirmed.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ Kirsten Frank Kelly

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<sup>4</sup> *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639-640; 607 NW2d 100 (1999).

<sup>5</sup> *Id.* at 639.